CHIEW SZE SUN

v.

MUTHIAH CHETTIAR

HIGH COURT MALAYA, SEREMBAN
ABDUL RAZAK J
[ORIGINATING MOTION NO. 118 OF 1980]
23 MARCH 1981

LAND LAW: *Private caveat filed after lien-holder's caveat endorsed on title - Whether lien-holder a person "aggrieved" - Whether a lien-holder's caveat has priority over a private caveat - Effect on subsequent private caveat - National Land Code 1965, ss. 322, 327(1), 330(5).*

This was an application by originating motion to set aside the ex-parte order made on 21 August 1980 and to order the Collector of Land Revenue, Seremban, to cancel the private caveat entered against the land held under E.M.R. 353 Lot 1051 and E.M.R. 526 lot 900 in the Mukim of Rasah, Seremban and for consequential relief thereto. The *ex-parte* order was pursuant to an application by the respondent to extend the period of the private caveat entered by him earlier on the lands. The private caveat was effected pursuant to a purported agreement of sale of two housing lots in the land in a proposed housing scheme entered into between the respondent and one Letchumanan, the owner of the lands. The respondent was purported to have paid the said Letchumanan a sum of RM10,000 as deposit.

The respondent's private caveat was lodged on 3 May 1980 whereas the applicant had earlier on 1 September 1979 lodged a lien-holder's caveat on the lands to protect his lien arising from a loan of RM370,000 to Letchumanan in which the latter had deposited the title deed with the applicant's solicitors.

The Collector of Land Revenue had in fact entered both the private caveat and the lien-holder's caveat on the same land. The applicant had applied to the Collector for the removal of the private caveat but the respondent had sought and obtained the *ex-parte* order extending the caveat until further order.

Held:

[1] The applicant need not have a registrable interest to qualify him to apply for removal of the private caveat. A lien-holder is within the meaning of a person aggrieved by the existence of a private caveat as provided by s. 327(1) of the National Land Code 1965. Though he had no registrable interest, he clearly had a grievance.

[2] A lien-holder's caveat has priority over a private caveat where it has been created earlier. The effect of the words in s. 330(5) that "a lien-holder's caveat shall, ..., have the like effect" as a private caveat is that the words "lien-holder's caveat" can substitute the words "private caveat" wherever they appear in s. 322. By the necessary application of s. 322(2) the private caveat is prohibited from being entered in the register document of title as against the lien-holder's which had been created earlier. The Collector should have rejected the private caveat.

[Judgment for the applicant. Order as prayed and costs.]

Legislation referred to:
National Land Code Act 56/1965, ss. 322, (2), 327(1), 330(5)

For the applicant - George Chelvaraj Proctor; M/s. K.P. Woon & Co.
For the respondent - M. Muthu Palaniyappan; M/s. Mahappan, Muthu & Peri

JUDGMENT

Abdul Razak J:

This originating motion seeks to set aside the *ex-parte* order made on 21 August 1980 in Originating Summons No. 94 of 1980 and to order the Collector of Land Revenue, Seremban to cancel the private caveat entered against the land held under EMR 352 Lot 1051 and EMR 526 Lot 900 Mukim of Rasah, Seremban (hereinafter referred to as "the land") and for consequential relief thereto. The *ex-parte* order was pursuant to an application by the respondent to extend the period of the private caveat entered by him earlier on the lands. This in turn was effected pursuant to a purported agreement made by the respondent with the owner of the lands one named Letchumanan in which the latter was said to have agreed to sell two housing lots in the said land in a proposed housing scheme wherein the respondent was purported to have paid the said Letchumanan a sum of RM10,000 as deposit. The respondent alleged that it was agreed between him and the said Letchumanan (who incidentally was his own brother) that the said Letchumanan would allow the respondent to caveat the land to protect his interest until the issue of qualified title. We are in a somewhat difficult situation to verify the accuracy of this statement because the said Letchumanan never deposed to these facts or the fact that a housing scheme was a reality because this fact was disputed by the applicant. In any event, for the purpose of my decision it is not really material to the issue.

For the necessary determination of the issues it is material to note at this stage that the date of the respondent's creation of the private caveat was on 3 May 1980. It is material also to note that the applicant had earlier on 1 September 1979 lodged a lien-holder's caveat on the said land to protect his lien arising from a loan of RM370,000 granted by him to the said Letchumanan in which the latter had deposited the title deed with the applicant's solicitors. It transpired thus that the Collector of Land Revenue had entered both the private caveat and the lien-holder's caveat on the same land. As would be expected therefore the applicant applied to the Collector of Land Revenue to remove the respondent's caveat but was responded by the respondent seeking and obtaining the *ex-parte* order above stated to extend the caveat until further order. Hence the present application to set it aside.

It is the applicant's contention that the respondent's caveat should have been rejected by the Collector of Land Revenue since it was created at a point of time after the applicant's lien-holder's caveat. The respondent's contention on the other hand was that the applicant had no registrable interest in the land which was a prerequisite to an application for removal. It is necessary therefore to look at the relevant sections of the National Land Code. Section 327(1) of the National Land Code which is necessarily the section under which the present application is made says:

Any person or body aggrieved by the existence of a private caveat may at any time apply to the Court for an order for its removal, and the Court (acting, if the circumstances so require, *ex parte)* may make such order on the application as it may think just.

The section clearly shows it does not require an applicant to be a person who has a registrable interest to qualify him to apply as the respondent contends. It needs only be a person aggrieved by the existence of a private caveat and clearly a lien-holder is one although he has no registrable interest as long as he has an interest, a grievance.

But the next question that need be asked is much more fundamental. It is whether a lien-holder's caveat has priority over a private caveat where one is created earlier than the other. In this respect it is relevant to observe the provisions of s. 330(5) which says:

A lien-holder's caveat shall, so long as it continues in force, have the like effect as that specified in subsections (2) to (5) of s. 322 in relation to private caveats, but as if the references in the said subsection (5) to the person or body at whose instance the caveat was entered were references to the person or body for the time being entitled to the benefit of the lien; and subsections (6) and (7) of the said s. 322 shall also apply in relation to lien-holder's caveats as they apply in relation to private ones.

The effect of saying in s. 330(5) that a lien-holder's caveat shall have the like effect as a private caveat is clearly thus in my humble view to substitute the words "private caveat" for the words "lien-holder's caveat" in cases and instances where they appear in s. 322. Thus it necessarily follows that by the necessary application of s. 322(2) which is directly relevant to our problem it would prohibit the private caveat from being entered on the register document of title as against the lien-holder's since the lien-holder's caveat was created earlier than the private caveat.

In my view therefore the Collector should, having had the lien-holder's caveat endorsed on the document of title, have rejected the private caveat.

I would therefore in the circumstances enter judgment for the applicant and make the order as prayed and costs.

Also found at [1982] CLJ 39